and the taxpayer are relieved of part of the burden of the expense of their maintenance.

It has been held that the deprivation of property resulting from a statute requiring policemen to be carried free is not constitutional where there is only a financial benefit to the state.[9] The providing of funds to carry on the functions of the state has never been considered an exercise of the police power. Nor would that power seem to include a lessening of the expense of government. Apart from the police power this action of the state can only be considered as the exercise of a power whose object is the same as that of taxation. But taxation must be uniform. It is difficult to see how the same purpose, to accomplish which a direct discrimination is not permitted, can supply any proper justification for a discriminatory regulation of rates. A different conclusion might be reached if the party discriminated against had a peculiar responsibility in aiding the state in carrying on the function the expense of which is lessened by the classification.[10] But in the Minnesota case the traveling public had no such responsibility.[11]

INSURANCE AS A FRAUDULENT CONVEYANCE OR PREFERENCE. — It is properly said that "there is no mystery or charm about life insurance."[1] But this proposition is not apparent in all the decisions which treat the question when insurance effected by a failing debtor in favor of a creditor or volunteer is voidable by his general creditors. The question has arisen most often where an insolvent attempts to provide for a wife, children, or other dependents by setting aside a portion of his income in the payment of premiums. In most states the matter is regulated by statute,[2] but in others a diversity of results is reached. The assignment of a policy to a volunteer is almost uniformly held fraudulent as to creditors.[3] It is a

---

[9] Wilson *v.* United Traction Co., 72 N. Y. App. Div. 233, 76 N. Y. Supp. 203. It is submitted that the case cited by the Minnesota court in support of the contrary of this proposition should not be construed as so holding. See Willcox *v.* Consolidated Gas Co., 212 U. S. 19, 29 Sup. Ct. 192.

[10] Such a situation arises when a railroad is required to pay part of the expenses of a state railroad commission. Charlotte, etc. Ry. Co. *v.* Gibbes, 142 U. S. 386, 12 Sup. Ct. 255.

[11] The established rule allows none to question the constitutionality of a statute because of discrimination, except one whose constitutional rights are thereby infringed. Brown *v.* Ohio Valley Ry. Co., 79 Fed. 176; Kansas City *v.* Union Pacific R. Co., 59 Kan. 427, 53 Pac. 468. Therefore the decision of the Minnesota court seems to be correct, since the objection is raised by the railroad against which there has been no discrimination.

[1] See Merchants' and Miners' Transportation Co. *v.* Borland, 53 N. J. Eq. 282, 285, 31 Atl. 272, 273.

[2] Twenty-eight states now have statutes of varying degrees of leniency to the beneficiary. Under statutes like that in Massachusetts, creditors may recover out of the proceeds of the policy the amount of the premiums, with interest, paid by the debtor with fraudulent intent. MASS., REV. LAWS, 1902, c. 118, § 73. Most lenient to the beneficiary is Tennessee, where all insurance on the husband's life enures to the benefit of his widow and children, free from the claims of his creditors. Both premiums and the face value of the policy may be unlimited in amount. TENN., CODE, 1896, § 4231.

[3] Taylor *v.* Coenen, 1 Ch. D. 636; Bailey *v.* Wood, 202 Mass. 562, 89 N. E. 149. *Contra*, Succession of Hearing, 26 La. Ann. 326, decided, however, in a civil-law jurisdiction, where the statute of Elizabeth is not in force.

valuable contract right and should be available in the general distribution of the estate.[4] But where the policy is made payable to the wife or child originally, at least three results have been reached by the courts. The doctrine of the United States Supreme Court[5] and some others[6] allows an insolvent husband to devote a moderate part of his income for his family's benefit, entirely free from the claims of creditors, provided there was not actual fraud. Another solution permits the beneficiary to keep the proceeds less the amount of premiums paid by the insolvent.[7] A third doctrine, which seems correct on principle, gives to the creditors all the proceeds, because they are the result of the investment of a sum fraudulently diverted from the estate.[8] Where some of the premiums are paid before and some after insolvency, the result has been said to depend on whether all the premiums together are regarded as the consideration for the insurer's promise, or only the first so regarded, and subsequent ones as the fulfilment of conditions.[9] Under the first view, the creditors would get a part of the proceeds proportionate to the premiums paid after insolvency;[10] under the latter, only such premiums themselves.[11] But this latter solution is more technical than just. Since in substance the payment of all the premiums is the consideration, a proportionate division seems fair.

The problem arises less often with regard to other kinds of insurance, but would seem to require an application of the same principles. When an insolvent grants or mortgages property and insures it for the benefit of the grantee or mortgagee, the question whether the insurance proceeds are recoverable as a preference or fraudulent conveyance is wholly separate from that whether the property itself would be recoverable. Though not a substitute for the property,[12] insurance money is the proceeds of a contract of indemnity.[13] As in the life insurance cases, the controlling consideration should be as to who paid for the contract, for neither individual creditors nor volunteers have a right to receive indemnity at the expense of the general creditors. Where the mortgagee pays all the premiums, he should keep the proceeds, for the estate has not suffered;[14] and where the mortgagor pays all, his creditors should prevail.[15] A more doubtful case arises where the mortgagor defaults

---

[4] See 1 MOORE, FRAUDULENT CONVEYANCES, 119.

[5] Central Bank of Washington *v.* Hume, 128 U. S. 195, 9 Sup. Ct. 41.

[6] Hendrie and Bolthoff Mfg. Co. *v.* Platt, 13 Colo. App. 15, 56 Pac. 209. See Elliott's Appeal, 50 Pa. St. 75, 83.

[7] Ætna National Bank *v.* United States Life Ins. Co., 24 Fed. 770. See Pence *v.* Makepiece, 65 Ind. 345, 360.

[8] Merchants' and Miners' Transportation Co. *v.* Borland, *supra*; Fearn *v.* Ward, 80 Ala. 555, 2 So. 114. See 25 AM. L. REV. 185.

[9] See 25 AM. L. REV. 185, 197.

[10] Pullis *v.* Robison, 73 Mo. 201.

[11] *In re* Bear and Steinberg, 11 Nat. Bankr. Reg. 46.

[12] See 1 MOORE, FRAUDULENT CONVEYANCES, 118.

[13] See 1 MAY, INSURANCE, 4 ed., § 2; RICHARDS, INSURANCE LAW, 3 ed., § 24.

[14] *Cf.* McLean *v.* Hess, 106 Ind. 555; Lerow *v.* Wilmarth, 9 Allen (Mass.) 382. Thus, if a preferred creditor insures property given him, and it is destroyed, he may retain the insurance money though he could not keep the property.

[15] North Star Boot and Shoe Co. *v.* Ladd, 32 Minn. 381. It is immaterial whether the bankrupt be mortgagor, or grantor, or has never had any interest in the property insured.

after paying some, and thereafter the mortgagee keeps them up on his own account. But here, too, it would seem that the proceeds should be apportioned according to the amount of premiums paid by each.

A recent case raises apparently for the first time the question whether the so-called union mortgage clause [16] in a policy on property mortgaged as a preference introduces a variation.[17] The court held that the mortgagor's trustee in bankruptcy was entitled to the proceeds. *Brown City Savings Bank* v. *Windsor*, 198 Fed. 28 (C. C. A., Sixth Circ.). As the court says, the clause does no more than protect "the mortgagee against the mortgagor's violation of conditions of the policy."[18] Whether it creates a contract directly between the insurer and the mortgagee or makes the latter the beneficiary of a contract between the insurer and the mortgagor, the mortgagee receives the benefit of any payment. If the mortgagor paid the premiums, as in the principal case,[19] his creditors should recover the proceeds.

RECENT CASES.

BANKRUPTCY — POWER SPRINGING FROM NECESSITY — PURCHASER OF PERISHABLE GOODS AFTER ADJUDICATION PROTECTED. — A mining dredge was attached during a process in a New Mexico court. Within four months after the attachment the owner of the dredge was adjudicated a bankrupt in Illinois. Thereafter, but before actual notice of the bankruptcy proceedings had come to the parties in New Mexico, the dredge was sold under a statute by order of the New Mexico court, because it was "of a perishable nature, and liable to be lost or diminished in value before the final adjudication of the case." The trustee of the bankrupt sought to avoid the sale, on the ground that he was vested with title as of the date of adjudication under § 70 of the Bankruptcy Act, and that the filing of the petition was a *caveat* to all the world. *Held*, that the title of the *bonâ fide* purchaser for value prevails over that of the trustee. *Jones* v. *Springer*, 226 U. S. 148, 33 Sup. Ct. 64.

The principal case, to protect the purchaser, invokes the doctrine of a power springing from necessity. Jurisdiction for the application of this doctrine is based on actual custody in situations requiring quick action rather than deliberation. *Jennings* v. *Carson*, 4 Cranch (U. S.) 2; *Baker* v. *Baker*, 1 Ventris

---

[16] The principal provisions of such clauses affecting this question are as follows: the loss is payable to the mortgagee as his interest shall appear; the mortgagee's interest is not invalidated by any act or neglect of the mortgagor, provided the former pays, on demand, premiums in default from the mortgagor. It is uniformly held that such a clause gives the mortgagee an interest distinct from the mortgagor. Hastings *v.* Westchester Fire Ins. Co., 73 N. Y. 141; Reed *v.* Firemen's Ins. Co. of Newark, 81 N. J. L. 523, 80 Atl. 462.

[17] In the principal case, the court was concerned with whether the proceeds of the policy were recoverable as a preference, within § 60 of the Bankruptcy Act of 1898; but it seems that the same considerations would apply as in determining whether there was a fraudulent conveyance within the Statute of Elizabeth in the life insurance cases.

[18] See principal case, p. 33.

[19] In the principal case, the mortgagee paid all the premiums, but the mortgage contained a provision that such payments should be a further lien on the premises. In effect, the mortgagor paid them.